

IP 94-0147-CR 1 H/F USA v Garth  
Judge David F. Hamilton

Signed on 05/01/08

**NOT INTENDED FOR PUBLICATION IN PRINT**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. IP 94-147-CR-1 H/F
	)	
LAVANTA GARTH	)	
	)	
Defendant.	)	

ENTRY ON MOTION TO REDUCE SENTENCE

Defendant Lavanta Garth has moved to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2) based on the Sentencing Commission's recent decision to give retroactive effect to amendments to base offense levels for crack cocaine offenses. Judge Tinder of this court originally sentenced Garth to a total of 120 months in prison, 60 months on each of two crack cocaine offenses, to run concurrently, and 60 additional months to run consecutively on a charge of carrying a firearm during drug trafficking under 18 U.S.C. § 924(c)(1). The sentence included a term of five years supervised release. Judge Tinder imposed sentence on May 30, 1995.

The court's record indicates that Garth completed that prison sentence and was on supervised release in November 2006 when he was charged with violating the terms of supervised release. On February 23, 2007, his supervised release was revoked. He was sentenced to an additional 27 months in prison.

On March 13, 2008, Garth filed his motion seeking a reduced sentence based on Amendments 706 and 711 to the Sentencing Guidelines, which retroactively reduced the base offense level for crack cocaine offenses by two levels, effective March 3, 2008. Because Judge Tinder is now a Circuit Judge, the case was reassigned to the undersigned judge to consider Garth's new motion.

The court must deny Garth's motion. The reason is that he is no longer serving a sentence on the crack cocaine charges. Even without trying to determine whether he served the five years on the firearm charge before or after the five years on the crack cocaine charges, he completed the combined prison sentence at least two years ago and was released to supervised release. He is now back in prison based on his violation of the conditions of supervised release, not on the original crack cocaine charges. The retroactive amendment therefore does not apply to Garth. The court believes this conclusion is so clear that the best course here is to deny his motion summarily, without requiring the United States Probation Office, the Federal Community Defender, or the United States Attorney's Office to devote time to it.

Even if the retroactive amendment applied to Garth, the Sentencing Commission's decision does not automatically result in a right to a reduced sentence. The court must exercise its judgment and discretion in each individual case. The record in this case shows that Garth would not be a good candidate for

the exercise of discretion to reduce his sentence. His supervised release was revoked because he possessed several ounces of marijuana packaged in the form of joints, and he possessed a firearm at the same location. He also failed to report contact with law enforcement to his probation officer. This is not behavior consistent with successful rehabilitation. Accordingly, the court denies defendant Garth's motion for a reduced sentence under 18 U.S.C. § 3582(c).

So ordered.

Date: May 1, 2008

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DAVID F. HAMILTON, CHIEF JUDGE  
United States District Court  
Southern District of Indiana

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